

UNITED STATES DISTRICT COURT JUL 27 2004
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Michael N. Milby, Clerk of Court

In re ENRON CORPORATION SECURITIES
LITIGATION

MDL Docket No. 1446

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Civil Action No. H-01-3624
(Consolidated)

Plaintiffs,

CLASS ACTION

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

[Caption continued on next page]

SEPARATE STATEMENT OF CERTAIN BANK DEFENDANTS WITH RESPECT TO
THE BANK DEFENDANTS' MOTION TO CLARIFY THE MARCH 11, 2004
SCHEDULING ORDER

2277

2019

2296

PAMELA M. TITTLE, et al.,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ENRON CORP.,

Plaintiffs,

vs.

ANDREW S. FASTOW, MICHAEL J. KOPPER,
BEN GLISAN, JR., RICHARD B. BUY,
RICHARD A. CAUSEY, JEFFREY K.
SKILLING, KENNETH L. LAY, JEFFREY
McMAHON, JAMES V. DERRICK, JR.,
KRISTINA M. MORDAUNT, KATHY LYNN,
ANNE YAEGER-PATEL, ARTHUR
ANDERSEN, LLP, AND CARL FASTOW, AS
ADMINISTRATOR OF THE FASTOW FAMILY
FOUNDATION,

Defendants.

ELAINE L. CHAO, SECRETARY OF THE
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

vs. §

ENRON CORP., et al.,

Defendants.

Civil Action No. H-01-3913

Civil Action No. H-04-0091

Civil Action No. H-03-2257
(Consolidated with H-01-3913)

**SEPARATE STATEMENT OF CERTAIN BANK DEFENDANTS WITH RESPECT TO
THE BANK DEFENDANTS' MOTION TO CLARIFY THE MARCH 11, 2004
SCHEDULING ORDER**

The Bank Defendants¹ submitted the Motion To Clarify The March 11, 2004 Scheduling Order With Respect To Third Party Complaints And Cross Claims In Actions Not Proceeding Under The Consolidated *Newby* and *Tittle* Complaints (the "Motion") seeking clarification as to the date by which defendants must file third party complaints and cross claims in actions that are not proceeding under the consolidated *Newby* and *Tittle* complaints.

While joining the Bank Defendants' Reply Concerning Their Motion to Clarify the March 11, 2004 Scheduling Order With Respect to Third Party Complaints and Cross Claims in Actions Not Proceeding Under the Consolidated *Newby* and *Tittle* Complaints (the "Bank Defendants' Reply"), two of the recently-joined Bank Defendants – Royal Bank of Scotland and Royal Bank of Canada, and their respective affiliates – named in *The Regents of the University of California v. Toronto Dominion Bank, et al.*, Civil Action No. H-03-5528 (S.D. Tex.) and *The*

¹ This motion was made on behalf of defendants Citigroup Inc., Citibank, N.A., Citigroup Global Markets Inc. (formerly Salomon Smith Barney Inc.), Citigroup Global Markets Ltd. (formerly known as Salomon Brothers International Limited), J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, J.P. Morgan Securities, Inc., Bank of America Corp., Banc of America Securities LLC, Bank of America, N.A., Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Credit Suisse First Boston LLC, Credit Suisse First Boston (USA), Inc., Pershing LLC, Merrill, Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Canadian Imperial Bank of Commerce, CIBC World Markets Corp., CIBC Inc., Toronto Dominion Bank, Toronto Dominion Holdings (USA), Inc., TD Securities, Inc., TD Securities (USA) Inc., Toronto Dominion (Texas) Inc., Royal Bank of Canada, RBC Dominion Securities Inc., RBC Dominion Securities Ltd., RBC Holdings (USA) Inc., RBC Dominion Securities Corp., Royal Bank Holding Inc., Royal Bank DS Holding, Inc., Royal Bank of Canada Europe Ltd., Deutsche Bank AG, Deutsche Bank Securities Inc., DB Alex. Brown LLC, Deutsche Bank Trust Company Americas, Lehman Brothers Holdings Inc., Lehman Brothers Inc., Lehman Brothers Commercial Paper Inc., The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, National Westminster Bank Plc, Greenwich Natwest Structured Finance, Inc., Greenwich Natwest Ltd., and Campsie Ltd. Certain of the bank defendants who joined the motion – namely, Royal Bank of Scotland, Royal Bank of Canada, and Toronto Dominion Bank, and their respective affiliates – are

Regents of the University of California v. Royal Bank of Canada, et al., Civil Action No. H-04-0087 (S.D. Tex.) (both of which are consolidated with *Newby*), respectfully submit this separate statement to address a continuing potential ambiguity in Lead Plaintiff's alternative proposed order.²

As described in the Motion, there is the potential to read the March 11, 2004 Order³ to suggest that defendants in the related and coordinated cases that are not currently proceeding under the *Newby* and *Tittle* consolidated complaints (the "Private Actions") are required to file third party complaints and cross claims by August 2, 2004. This would create the procedural anomaly of requiring many of the defendants in the Private Actions to file cross claims and third party complaints before even having responded to the complaints in such actions. *See* Motion at 6-7; Bank Defendants' Reply at 5. The same illogical situation would result in requiring Royal Bank of Scotland and Royal Bank of Canada, and their respective affiliates – each of whom have initial motions to dismiss outstanding and have not yet been required to file an Answer in *Newby* – to file third party complaints and cross claims in *Newby* by August 2, 2004. *See* Motion at fn. 5. The Proposed Order submitted by the Bank Defendants sought to eliminate this potential ambiguity and confirm explicitly that those Bank Defendants did not have to file cross claims or implead third party defendants before filing an Answer.

Lead Plaintiff's Proposed Order (as well as the Proposed Order submitted by the American National and Westboro plaintiffs⁴) is potentially ambiguous on this point and fails to

covered by the stay of discovery under the Private Securities Litigation Reform Act (15 U.S.C. Sec. 78u-4(b)(3)(B)), and joined without waiving any rights with respect to that stay.

² See Lead Plaintiff's Response to Bank Defendants' Motion to Clarify the March 11, 2004 Scheduling Order With Respect to Third Party Complaints and Cross Claims in Actions Not Proceeding Under the Consolidated *Newby* and *Tittle* Complaints, dated July 23, 2004, and Proposed Order.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

⁴ See American National and Westboro Plaintiffs' Opposition to the Banks' Motion to Modify Scheduling Order, dated July 22, 2004, and Proposed Order.

address this procedural anomaly. Accordingly, Royal Bank of Scotland and Royal Bank of Canada, and their respective affiliates, respectfully request that the Court enter the Proposed Order submitted with the Bank Defendants' Reply, or otherwise make explicit in any Order entered that these two Bank Defendants with initial motions to dismiss outstanding, consistent with Rule 14 of the Federal Rules of Civil Procedure⁵, do not have to file cross claims or third party complaints in *Newby* until ten days after they file an Answer in *Newby*.

Dated: July 27, 2004

Respectfully submitted,

By: Claude L. Stuart III
Claude L. Stuart, III
PHELPS DUNBAR, LLP
3040 Post Oak Boulevard, Suite 900
Houston, Texas 77056
Telephone: (713) 626-1386
Facsimile: (713) 626-1388

OF COUNSEL:

Michael J. McNamara
Mark D. Kotwick
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 574-1200
Facsimile: (212) 480-8421

ATTORNEYS FOR DEFENDANTS ROYAL BANK
OF CANADA, RBC DOMINION SECURITIES INC.,
RBC DOMINION SECURITIES LTD., RBC
HOLDINGS (USA) INC., RBC DOMINION
SECURITIES CORP., ROYAL BANK HOLDING
INC., ROYAL BANK DS HOLDING INC., ROYAL
BANK OF CANADA EUROPE LTD.

⁵ Rule 14 provides that a third party complaint may be filed without leave of Court within ten days after a party serves its answer, and thereafter only with the Court's leave. Fed. R. Civ. P. 14(a).

By: David E. Miller by CLS with permission

David E. Miller
Laurie DeBrie Thanheiser
JONES DAY
717 Texas, Suite 3300
Houston, Texas 77002
Telephone: (832) 239-3939
Facsimile: (832) 239-3600

OF COUNSEL:

John M. Newman, Jr.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44144
Telephone: (216) 586-7207
Facsimile: (216) 579-0212

ATTORNEYS FOR THE ROYAL BANK OF
SCOTLAND GROUP PLC, THE ROYAL BANK OF
SCOTLAND PLC, NATIONAL WESTMINSTER
BANK PLC, GREENWICH NATWEST
STRUCTURED FINANCE, INC., GREENWICH
NATWEST LTD., CAMPSIE LTD.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served upon all known counsel of record by electronic mail to the esl3624.com website on this 27th day of July 2004.


Claude L. Stuart, III

02736.0030 #501665